IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPEALLATE SIDE JURISDICTION

APPEAL FROM ORDER NO.220 OF 2004
IN
B.C.C.C.NOTICE OF MOTION NO.2857 OF 2003
IN L.C.SUIT NO.3617 OF 2003

Hanumansharan R. Mishra ..Appellant
Vs.
Municipal Corpn. for Greater Mumbai
and Another ..Respondents

Mr.M.V.Holmagi, Advocate for the Appellant
Mr.R.D.Soni, Advocate for Respondent No.2
Mr.J.Xavier, Advocate for B.M.C.

CORAM: V.C.DAGA,J.
DATE: 30TH AUGUST, 2004.

P.C.

1. Heard rival parties. This appeal is directed against the order dated 15th December, 2003 passed by the City Civil Court, whereby the Notice of Motion No.2857 of 2003 came to be rejected.

2. In the notice of motion, the appellant was seeking interim injunction against the defendant corporation to reestrain it from demolishing and/or pulling down and/or removing the suit premises or any part thereof and from dispossessing the plaintiff/applicant from the suit premises, situated in the compound of Crystal Kanta Building, R.B. Kadam Marg, Jivdaya Lane, Ghatkopar (W), Mumbai-400084.

3. The impugned action was initiated by the Corporation vide its notice dated 12th May, 2003

issued under Section 351 of the B.M.C. Act pursuant to the order of this Court dated 6th April, 2004 whereby this Court was pleased to grant liberty to the applicant to make an application to the Respondent No.1 for regularisation of the structure, within two weeks from the date of the said order. The Assistant Commissioner (N) Ward, was directed to decide the same within four weeks thereafter. While passing this order, this Court had specifically clarified that this order would neither affect the rights of Respondent No.2 in any manner whatsoever nor would create any equity in favour of the applicant. While passing this order dated 6th April, 2004 this Court was also pleased to record undertaking of the applicant, reading as under :-

> In the event of the application for regularisation being rejected, the Appellant who is present in Court undertakes to demolish the same within two weeks failing which Respondent No.1 is directed to demolish the same. The undertaking is accepted.

2. In pursuance of the aforesaid order dated 6th April, 2004, it appears that the present Appellant has made an application to the Corporation to regularise his unauthorised construction. This

application made to the Corporation appears to have been rejected by it vide order dated 13th October, 2004 for the reasons recorded therein. The Appellant states that this adverse order dated 13th October, 2004 has been challenged by him on 13th May, 2004 before the State Government. According to Mr.Holmagi State Government has granted stay to the action of the Corporation vide its stay order dated 9th June, 2004, however, the copy of the said order has not been produced on record. Mr. Soni disputes the very existence of such order.

3. Be that as it may. Mr. Holmagi appearing for the appellant submits that on 10th June, 2004 the structure has been demolished in breach of the Order of this Court dated 6th April, 2004 as well as the order of stay granted by the State Government. In his submission, this is a clear case wherein action under the provisions of Contempt Act is required to be initiated.

4. In view of the aforesaid subsequent developments subsequent to the filing of the present appeal and the submissions made by Mr. Holmagi, in my considered view, cause of action for the present appeal as an date does not survive. The appeal is thus liable to be dismissed for want of cause of action. So far the question as to whether or not the Corporation has committed contempt cannot be

considered in the present appeal.

5. It is thus made clear that if the Appellant entertains a belief that the Respondent- Corporation or any other Respondents have committed contempt either of this Court or State Government it would be open for the Appellant to take appropriate action in accordance with law. This order is being passed without prejudice to the rights of the either of the parties. Civil Application being Civil Application No.18404 of 2002 pending in this appeal, thus, accordingly stands disposed of with no order as to costs.

6. In the result appeal is dismissed for want of cause of action with no order as to costs. Needless to mention that interim relief, if any, shall stand withdrawn with the dismissal of this Appeal. It is also made clear that any civil application if pending shall stand disposed of in view of disposal of this appeal with no orders as to costs.

. Parties to act on authenticated copy of this order.

(V.C.DAGA,J.)